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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
Western Wayne School District)	Application No. 107715
Pershing, Indiana)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors)	
of the National Exchange Carrier)	CC Docket No. 97-21 ✓
Association, Inc.)	
)	

ORDER

Adopted: July 29, 1999

Released: July 29, 1999

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration an appeal by Western Wayne School District, Pershing, Indiana (Western Wayne) filed on April 30, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator).¹ Western Wayne seeks review of the SLD's denial of its application for discounts for telecommunications services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Western Wayne's appeal and affirm the SLD's denial of Western Wayne's application for discounts for telecommunications services.

I. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³

¹ The Commission's rules provide that requests for review of decisions issued by the Universal Service Administrative Company (USAC or the Administrator) shall be considered and acted upon by the Common Carrier Bureau, provided, however, that requests for review that raise novel questions of fact, law, or policy shall be considered by the full Commission. 47 C.F.R. § 54.722(a). Western Wayne does not raise novel questions of fact, law, or policy and therefore this matter will be acted upon by the Common Carrier Bureau.

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

The Commission's rules provide that, with one limited exception, an eligible school, library, or consortium must seek competitive bids for all services eligible for support.⁴

3. To comply with this competitive bid requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant lists the services for which it seeks discounts.⁵ The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁶ The rules also require that the Administrator send confirmation to each applicant that its FCC Form 470 has been received and posted (Receipt Acknowledgment Letter). After the FCC Form 470 has been posted for 28 days, and the applicant has selected a service provider, the applicant must submit to the Administrator an FCC Form 471, which lists the services that have been ordered.⁷ If the Administrator has established a filing window, all FCC Form 471s submitted during the filing window will be treated as if they were simultaneously received.⁸ For the first funding period, the filing window opened on January 30, 1998 and closed on April 15, 1998.

4. The Commission's rules provide a limited exemption from the 28-day competitive bid requirement for applicants that have "pre-existing contracts," as defined by the Commission's rules.⁹ As described in the instructions for completing FCC Form 470, services ordered pursuant to a tariff do not constitute a "pre-existing contract."¹⁰ Item 10 in Block 3 of

⁴ 47 C.F.R. § 54.504.

⁵ 47 C.F.R. §§54.504(b)(1), (b)(3). In submitting FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, e.g., number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services, e.g., number of computers.

⁶ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁷ 47 C.F.R. § 54.504(c). A commitment of support is contingent upon the filing of FCC Form 471.

⁸ 47 C.F.R. § 54.507(c).

⁹ A signed contract between an eligible school, library, or consortium for services eligible for discounts under the schools and libraries universal service support mechanism is exempt from the Commission's competitive bidding requirements as follows: (1) a contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract; and (2) a contract signed after July 10, 1997, but before the date on which the universal service competitive bid system became operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract for the first funding period. 47 C.F.R. §§ 54.511(c)(1)(i) and (ii); 54.511(d).

¹⁰ FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7. See also *Federal-State Joint Board on Universal Service and Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure, and Pricing End User Carrier Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 at para. 217 (1998); *Federal-State Joint Board on Universal Service*, Tenth

the FCC Form 470 directs the applicant to check the box if it has an existing, binding contract. If an applicant checks Item 10, the SLD will not post the FCC Form 470.¹¹ Applicants with existing contracts are still required, however, to wait 28 days before filing their FCC Form 471. In this case, Western Wayne checked Item 10, and thus the Form 470 was not posted.

5. Based on Western Wayne's FCC Form 471, the SLD determined that Western Wayne did not have a pre-existing contract that would have exempted it from the competitive bid requirement, but rather had ordered services pursuant to a tariff, and should not have checked Item 10 on the Form 470. Accordingly, by letter dated January 26, 1999, the SLD denied Western Wayne's request for discounts for tariffed telecommunications services on the ground that Western Wayne's FCC Form 470 was not posted on SLD's website for 28 days, in violation of the Commission's competitive bid requirement. Western Wayne appealed the SLD's decision by letter dated March 16, 1999.¹² In its appeal, Western Wayne noted that, based on the Receipt Acknowledgement Letter, which indicated that because its form 470 listed only descriptions of services currently being provided under pre-existing contracts, it believed that its FCC Form 470 did not need to be posted.¹³ In this regard, Western Wayne also noted that it had waited 28 days before filing its FCC Form 471, as directed in the Receipt Acknowledgement Letter.

6. On May 21, 1999, the SLD affirmed its initial funding decision and denied Western Wayne's appeal.¹⁴ In the "Administrator's Decision on Appeal," the SLD explained that Western Wayne's request for tariffed telecommunications services was not posted on the website for 28 days because Western Wayne had checked Item 10 in Block 3 on FCC Form 470, which directs the applicant to check the box if the applicant has an existing, binding contract.¹⁵ The SLD further explained that the only exemption from the Commission's

Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 5983 (1999).

¹¹ 47 C.F.R. § 54.511(c).

¹² Letter from Josette Johnson, Western Wayne School District, to the Schools and Libraries Corporation, dated March 16, 1999 (March 16 Appeal Letter) at 1-2.

¹³ March 16 Appeal Letter at 3. The Receipt Acknowledgement Letter indicated that "[a]ccording to FCC rules, because your Form 470 lists only descriptions of services currently being provided under pre-existing contracts, it will not be necessary to post your application on the SLC website."

¹⁴ Letter from the Schools and Libraries Division, Universal Service Administrative Company to Josette Johnson, Western Wayne School District, "Administrator's Decision on Appeal," dated May 21, 1999.

¹⁵ Administrator's Decision on Appeal at 1. Specifically, Item 10 on FCC Form directs the applicant to "[c]heck if applicant seeks discounts only for eligible services based on one or more **existing, binding** contract(s). . . ." See FCC Form 470, Block 3, Item 10. The instructions for Item 10 in Block 3 of FCC Form 470 state that "[i]f you are purchasing telephone service at tariffed rates and have not signed a binding contract, you cannot treat this arrangement as an existing contract." FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7.

competitive bid requirement is for services that were the subject of an existing contract prior to January 30, 1998.¹⁶ Because Western Wayne did not have a "pre-existing contract," the SLD denied Western Wayne's appeal of the SLD's funding decision for failure to comply with the competitive bid requirement.

II. DISCUSSION

7. In Western Wayne's request for review of the SLD's decision that is now before us, Western Wayne concedes that it erroneously checked Item 10 in Block 3 on FCC Form 470 indicating that it had a pre-existing contract for telephone service.¹⁷ Western Wayne contends, however, that the error was the result of "confusion over the frequently changing instructions and rulings during the filing period for the first application year."¹⁸ In this regard, Western Wayne states that it did not check Item 10 in Block 3 in the draft FCC Form 470 that it prepared prior to filing the form electronically. For the reasons set forth below, we conclude that the SLD properly denied Western Wayne's application for discounts for tariffed telecommunications services.

8. Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by the Administrator,¹⁹ we have reviewed Western Wayne's FCC Form 470 and FCC Form 471. We have confirmed that Western Wayne checked Item 10 in Block 3 of FCC Form 470 indicating that it had a "pre-existing contract." We also have confirmed that Western Wayne's FCC Form 471 indicates that it would receive the telecommunications services for which it sought universal service support under the schools and libraries universal service support mechanism pursuant to a tariff, not an existing contract. The instructions for completing FCC Form 470 clearly state that services received pursuant to a tariff do not constitute pre-existing contracts.²⁰ For this reason, we conclude that the failure to post Western Wayne's Form 470 was the result of Western Wayne's own error. Accordingly, because only applicants with existing contracts, as defined in section 54.511(c)(1) of the Commission's rules, are exempt from the Commission's competitive bid requirement, and because tariffs do not constitute "pre-existing contracts," we find that the SLD properly denied Western Wayne's funding request for tariffed telecommunications services for failure to

¹⁶ Administrator's Decision on Appeal at 1. Under 47 C.F.R. § 54.511(c), contracts signed prior to July 10, 1997 are exempt from the Commission's competitive bidding rules for the life of the contract. 47 C.F.R. § 54.511(c)(1)(i). Contracts signed after July 10, 1997, but prior to January 30, 1998 are exempt from the Commission's competitive bidding rules for the first funding year. 47 C.F.R. § 54.511(c)(1)(ii).

¹⁷ Letter from Josette Johnson, Western Wayne School District, to the Federal Communications Commission, dated April 27, 1999 (April 27 Appeal Letter) at 1.

¹⁸ *Id.*

¹⁹ 47 C.F.R. § 54.723(a).

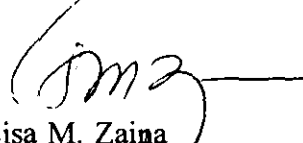
²⁰ FCC Form 470, "Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470)" at 7.

comply with the 28-day competitive bid requirement.

9. Finally, we note that, to the extent the Receipt Acknowledgement Letter indicated that it would not be necessary for the SLD to post Western Wayne's FCC Form 470 because the services for which it sought support were being provided under pre-existing contracts, we find that Western Wayne was on notice once it received the Receipt Acknowledgment Letter that there was an error in its application. Indeed, had Western Wayne recognized its mistake at that time, there would have been sufficient time for Western Wayne to resubmit its FCC Form 470 for posting on the SLD's website for 28 days and to submit its FCC Form 471 within the filing window. Pursuant to the Commission's rules, it is the SLD's responsibility to post to its website all properly filed FCC Form 470s²¹ and SLD will not post an FCC Form 470 if the applicant has checked Item 10 in Block 3 of FCC Form 470.²² As noted above, because Western Wayne indicated that service would be received pursuant to a "pre-existing contract" by checking Item 10 in Block 3, the lack of posting and competitive bidding was due to Western Wayne's own error and thus disqualified it from receiving approval.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeal filed by Western Wayne School District, Pershing, Indiana, on April 30, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Lisa M. Zaina
Acting Deputy Chief
Common Carrier Bureau

²¹ 47 C.F.R. § 54.504(b)(3).

²² In light of the thousands of applications that the SLD must review in each funding year, it would be administratively impossible for the SLD to confirm with each applicant at the time the FCC Form 470 is filed that the applicant properly checked Item 10 in Block 3. Indeed, absent contacting each applicant to confirm that the applicant properly checked Item 10 in Block 3, the SLD could not have known of the error in Western Wayne's FCC Form 470 until Western Wayne filed its FCC Form 471 in which it indicated that it was ordering telecommunications services pursuant to a tariff, and not pursuant to a "pre-existing contract." We note that, when applying for discounts under the schools and libraries universal service support mechanism, each applicant must take responsibility for understanding the Commission's rules. We also note that the SLD has a website that provides online help with the application process and also has a toll-free helpline.